

APPENDIX B

WETLANDS BOARD

CHAPTER 483-A

FILL AND DREDGE IN WETLANDS

[New Sections]

483-A:5-a Administrative Fine.
483-A:5-b Additional Penalty.

Protection of Sand Dunes

483-A:8 Vehicles Prohibited.

CROSS REFERENCES

Department of environmental services generally, see RSA 21-O.

ANNOTATIONS

1a. Construction

The legislature, by enacting the regulatory scheme created by provisions of this chapter, did not intend to vest exclusive jurisdiction over state waters in the water resources board, and to eliminate the right of property owners to bring an action for a violation of their riparian rights when the board has not authorized the filling or dredging in state waters. *Wisniewski v. Gemmill* (1983) 123 NH 701, 465 A2d 875.

1b. Jurisdiction

Property which is part of an area contiguous to tidal water may not be removed from the jurisdiction of the New Hampshire Wetlands Board, by property owner's subdivision of the property so as to create a "buffer zone" where a subdivided lot consequently would not

border tidal water, since such a manufactured artificial boundary would contravene the legislature's intent and purpose of this chapter. *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

LIBRARY REFERENCES

New Hampshire Code of Administrative Rules

Rules of the Wetlands Board, Wt 101.01 et seq., New Hampshire Code of Administrative Rules Annotated.

483-A: 1 Excavating and Dredging Permit; Certain Exemptions.

I. No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without written notice of his intention to construct, excavate, remove, fill or dredge to the wetlands board. The notice shall be sent to the wetlands board and shall be accompanied by a filing fee. The filing fee shall be \$10 for minimum impact projects, \$25 for minor projects, and \$100 for major projects. At the time of filing with the wetlands board, said person shall also file 3 copies of the notice, with a detailed plan, including a map showing the exact location of the proposed project with the town or city clerk. The town or city clerk shall immediately send a copy of the notice to the selectmen, mayor or city manager, the municipal planning board, if any, and the municipal conservation commission, if any, and may require an administrative fee not to exceed \$2. The copies of the notice shall be made reasonably accessible to the public. [Amended 1983, 433: 1. 1985, 132: 1, eff. July 1, 1985.]

II. (a) The wetlands board shall submit to the governor and council all requests for permits approved by the board which meet the definition of major projects located in great ponds or public-owned water bodies under the rules of the wetlands board which have been approved by the board as complying with the requirements of the rules.

(b) The governor and council shall consider the request for permit transmitted by the board. The council may approve as transmitted or deny the submitted request. Following action by the governor and council the requests shall be returned to the board for permitting, if approved, or filing, if denied. [Amended 1987, 148: 2, eff. July 10, 1987.]

III. Ten dollars of each filing fee collected pursuant to RSA 483-A: 1, I is hereby appropriated to and shall be expended by the wetlands board for per diem and expenses of the public members in reviewing applications and activities relative to the wetlands of the state. The remainder of the filing fee shall be expended by the wetlands board for conducting field investigations and public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands board review fund. [Added 1983, 432: 5. Amended 1985, 132: 2, eff. July 1, 1985.]

IV. The replacement or repair of existing structures in or adjacent to any waters of the state which does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp is exempt from the provisions of this chapter. [Added 1987, 148: 3, eff. July 10, 1987.]

Amendments—1983. Paragraph I: Chapter 433 rewrote the second sentence.

Paragraph III: Added by ch. 432.

—1985. Paragraph I: Added the third sentence, deleted "\$10" preceding "filing" in the second sentence, and substituted "including" for "if a major project, but accompanied by" preceding "a map" in the present fourth sentence.

Paragraph III: Amended generally.

—1987. Paragraph II: Amended generally. Paragraph IV: Added.

ANNOTATIONS**1. Cited**

Cited in *Claridge v. New Hampshire Wetlands Board* (1984) 125 NH 745, 485 A2d 287; *Appeal of Milford Water Works* (1985) 126 NH 127, 489 A2d 627.

483-A: 1-a Definition. Without limiting RSA 483-A: 1, the waters and adjacent areas within this state to which this chapter applies are defined as follows:

I. Wherever the tide ebbs and flows, it shall apply to all lands submerged or flowed by mean high tide as locally determined, and, in addition, to those areas which border on tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action (including those areas not or formerly connected to tidal waters) whose surface is at an elevation not exceeding 3-1/2 feet above local mean high tide and upon which grow or are capable of growing some, but not necessarily all, of the following: salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardi*), salt-marsh grass also known as cordgrass (*Spartina alterniflora*), saltworts (*Salicornia* spp.), sea lavender (*Limonium carolinianum*), salt-marsh bulrushes (*Scirpus maritimus*, var. *fernaldii* and *Scirpus paludosus*, var. *atlanticus*), sand spurrey (*Spergularia marina* and *Spergularia canadensis*), high-tide bush (*Iva frutescens*), spike rush (*Eleocharis parvula* and *Eleocharis halophila*), chairmaker's rush (*Scirpus americana*), bent grass (*Argostis palustris*), coast-blite (*Suaeda* spp.), orach (*Atriplex patula*), arrow-grass (*Triglochin maritima*) and sea-side goldenrod (*Solidago sempervirens*) and any sand dune or vegetation thereon in the state of New Hampshire. "Sand dune", as used in this chapter, shall mean a hill or ridge of sand piled up by the wind and commonly found on the seacoast. The occurrence and extent of salt-marsh peat at the undisturbed surface shall be evidence of the extent of jurisdiction hereunder within a salt-marsh. [Amended 1985, 413: 1, eff. July 3, 1985.]

[No changes in paragraphs II and III.]

Amendments—1985. Paragraph I: Substituted "state of New Hampshire" for "town of Seabrook; provided, however, any homeowner in said town may remove sand which blows or drifts on the porch, patio or steps of the homeowner's dwelling" following "sand dune or vegetation thereon in the" at the end of the first sentence and "chapter" for "paragraph" in the second sentence.

ANNOTATIONS

½. Constitutionality

The definitions contained in this section are not unconstitutionally vague and overbroad because they set forth imprecise or incalculable scientific requirements, since expert witnesses at trial had little difficulty in determining whether property met these definitions. *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

483-A: 1-b Finding of Public Purpose. It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

HISTORY

Source. 1970, 22: 1, eff. May 4, 1970.

ANNOTATIONS**1. Cited**

Cited in *Sibson v. State* (1975) 115 NH 124, 336 A2d 239, overruled on other grounds, *Burrows v. City of Keene* (1981) 121 NH 590, 432 A2d 15.

483-A: 1-b Finding of Public Purpose.**ANNOTATIONS****1. Cited**

Cited in *Smith v. State* (1984) 125 NH 799, 486 A2d 289; *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

483-A: 1-c Establishment of Wetlands Board.

I. There is hereby established a wetlands board for the purpose of carrying out the provisions of law conferring on the division of water resources authority to decide matters relative to resources of the state, including, but

not limited to, excavating, dredging and filling waters of the state. Appointees and officials shall have voting rights as members of the wetlands board; provided, however, that nothing herein shall be construed as affecting other duties of the division of water resources with reference to dams, water levels, and administration of the division or the department of environmental services. The wetlands board shall be composed of the following:

- (a) The executive director of the department of fish and game or his designee;
- (b) The commissioner of the department of transportation or his designee;
- (c) The commissioner of the department of resources and economic development or his designee;
- (d) The director of the office of state planning or his designee;
- (e) The director of the division of water resources in the department of environmental services or his designee;
- (f) The director of the division of water supply and pollution control in the department of environmental services or his designee;
- (g) The director of the division of waste management in the department of environmental services or his designee;
- (h) The commissioner of the department of safety or his designee;
- (i) 3 members of the public appointed by the governor and council for a term of 3 years or until a successor is chosen. One of these shall be a member of a municipal conservation commission at the time of appointment, one shall be a member of a soil or water conservation district at the time of appointment, and one shall be an elected municipal official at the time of appointment. The 3 members appointed under this subparagraph shall be entitled to expenses as may be authorized by the governor and council.

II. The wetlands board shall be administered by the commissioner of environmental services.

Source. 1979, 392:1. 1982, 42:114. 1985, 402:6, I(b)(8). 1986, 202:22.

Amendments—1985. Paragraph I(b): Substituted "commissioner of the department of transportation" for "commissioner of the department of public works and highways".

—1986. Paragraph I: Substituted "division of water resources" for "water resources board" preceding "authority" in the first sentence and following "duties of the" in the second sentence and "division of the department of environmental services" for "department" following "administration of the" in that sentence of the introductory paragraph and rewrote subpars. (e)–(h).

Paragraph II: Amended generally.

Effective date of 1985 amendment. 1985, 402:41, II, provided that the provision of the act amending this section was to take effect on the date the department of transportation established by the act becomes operational on

the date set according to 1983, 372:5, II. 1983, 372:5, II, is set out in a note following the analysis for RSA 21-G.

Pursuant to 1983, 372:5, II, the joint committee on implementation of reorganization approved the plan implementing the department of transportation at a meeting held on Jan. 13, 1986. The joint committee on implementation of reorganization and the governor determined the effective date upon which the department became fully operational to be Feb. 28, 1986.

Effective date of 1986 amendment. 1986, 202:31, I, eff. July 1, 1986, provided that the provision of the act amending this section was to take effect on the date the department of environmental services established by the act becomes operational on the date set according to 1983, 372:5, II. 1983, 372:5, II, is set out in a note following the analysis for RSA 21-G.

Pursuant to 1983, 372:5, II, the joint committee on implementation of reorganization

approved the plan implementing the department of environmental services at a meeting held on Nov. 24, 1986. The joint committee on implementation of reorganization and the governor determined the effective date upon which the department shall become fully operational to be Jan. 2, 1987.

Administration of the wetlands board as an agency of the department of environmental services. 1986, 202:2, IV, eff. July 1, 1986, provided that the wetlands board shall become an agency of the department of environmental services, administered by the commissioner of environmental services, on the date that department becomes operational, which is on a date set according to 1983, 372:5, II. 1983, 372:5, II, is set out in a note following the analysis for RSA 21-G.

483-A: 1-d Gifts, Grants or Donations. The wetlands board is authorized to solicit and receive any gifts, grants or donations made for the efforts of the wetlands board as established by RSA 483-A: 1-c and to disburse and administer the same through the water resources board.

HISTORY

Source. 1979, 392: 1, eff. Aug. 22, 1979.

483-A: 2 Hearing. The board shall hold a public hearing on proposals under RSA 483-A: 1 in accordance with regulations promulgated by the board, within 60 days of the receipt of said notice, and shall notify by mail the person intending to do such excavating, removing, filling, dredging or altering, the selectmen or the proper city official of the municipality involved, the planning board, if any, the municipal conservation commission, if any, and the members of the board.

HISTORY

Source. 1967, 215: 1; 147: 14. 1969, 387: 2. 1979, 392: 3, eff. Aug. 22, 1979; 431: 1, eff. Aug. 22, 1979.

—1969. Substituted "water resources board" for "New Hampshire Port Authority".

Amendments—1979. Chapter 392 substituted "wetlands board" for "water resources board".

Chapter 431 amended the section generally.

Revision note. At the beginning of the section, substituted "proposals under RSA 483-A: 1" for "said proposal" for purposes of clarity.

CROSS REFERENCES

Person defined, see RSA 483-A: 4-a.

Suspension of action by board pending investigations and reports by municipal conservation commissions, see RSA 483-A: 4-a.

ANNOTATIONS

1. Cited

Cited in *Sibson v. State* (1969) 110 NH 8, 259 A2d 397.

483-A: 2 Hearing.

ANNOTATIONS

1. Cited

Cited in *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

483-A: 2-a Notice to Abutters. Like notice shall be seasonably mailed to all known abutting landowners, supplemented by reasonable notice by newspaper publications to those unknown, as may be ordered by the wetlands board.

HISTORY

Source. 1970, 22: 2. 1979, 392: 3, eff. Aug. 22, 1979.

Amendments—1979. Substituted "wetlands board" for "water resources board".

CROSS REFERENCES

Notice generally, see RSA 483-A: 2.

483-A: 3 Powers of Wetlands Board.

I. The wetlands board may deny the petition or may require the installation of bulkheads, barriers, proper retention and/or containment structures to prevent subsequent fill runoff back into waters or other protective measures.

II. For the purpose of performing the duties under this chapter, it shall be lawful for the board, its agents or employees to enter upon any lands in the state.

HISTORY

Source. 1967, 215:1. 1969, 387:3. —1977. Designated the existing provisions of the section as par. I, deleted "tidal" preceding "waters" in that paragraph, and added par. II.

Amendments—1979. Substituted "wetlands board" for "water resources board" in par. I. —1969. Amended section generally.

CROSS REFERENCES

Administrative inspection warrants, see RSA 595-B.

Granting of permits for projects, see RSA 483-A: 4-b.

Requirements as to decision by board, see RSA 483-A: 4-a.

ANNOTATIONS

1. Cited

Cited in *Sibson v. State* (1969) 110 NH 8, 259 A2d 397.

483-A: 3 Powers of Wetlands Board.

ANNOTATIONS

1. Cited

Cited in *Claridge v. New Hampshire Wetlands Board* (1984) 125 NH 745, 485 A2d 287.

483-A: 4 Rehearings and Appeals; Damages.

I. Any party to or participating in the action or proceedings before the board may apply for a rehearing and may appeal to the superior court for the county where the land in question is located under the same procedure as is provided for appeals in RSA 677:2-14, inclusive. Each appeal shall contain a careful description of the land involved in the board's decision. Service of the appeal shall be made on any member of the board and the superior court shall have the same jurisdiction to dispose of such appeals as is provided in RSA 677:2-14 governing appeals. [Amended 1985, 103:5, eff. Jan. 1, 1986.]

[No changes in paragraphs II-IV.]

Amendments—1985. Paragraph I: Substituted "RSA 677:2-14" for "RSA 31:74-87" in the first and third sentences.

ANNOTATIONS

1. Cited

Cited in *Wisniewski v. Gemmill* (1983) 123 NH 701, 465 A2d 875; *Claridge v. New Hampshire Wetlands Board* (1984) 125 NH 745, 485 A2d 287; *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

II. If, upon appeal of the landowner, the superior court determines that the decision appealed from so exceeds the bounds of the police power as to constitute the equivalent of a taking without compensation and that the land as so regulated meets the public purpose standards of this chapter, and if such ruling is affirmed on appeal or becomes the law of the trial by failure of the state to appeal, the superior court shall then proceed to the assessment of the landowner's damages. Unless the board, at this stage,

consents to the reversal or modification of its decision by the superior court, that court shall first determine all questions of land title, after notice to all persons interested in the land, including notice by publication to any unknown owners, and then shall assess the damages of the landowner or landowners, proceeding as provided in RSA 482: 25-28, inclusive, and RSA 481: 10, II and III, and may enter judgment against the state accordingly. The interest acquired by the state by virtue of such proceedings shall be a perpetual negative easement that the privately-owned land or interest therein described in the proceedings shall not thereafter be excavated, removed, filled, dredged, canalized or ditched, subject to any such reasonable reservations to the landowner, as the board may have stipulated to, prior to the assessment of damages. The state may, in the alternative, purchase the land or interest therein in fee simple or other acceptable title, or subject to acceptable reservations and exceptions, by agreement with the landowner. To satisfy any judgment or purchase agreement hereunder, the governor and council, in their discretion, may draw their warrant on the marine fisheries fund, the fish and game fund, any other available appropriation therefor, or on any money in the treasury not otherwise appropriated, or any combination thereof, as they may determine to be just and reasonable, or, in the alternative, they may certify a judgment to the next session of the general court for the passage of an appropriation of money sufficient to satisfy the same. The board may, in the name of the state, accept gifts of land or interests therein for the purposes of this chapter.

III. The use of the marine fisheries fund or the fish and game fund under paragraph II shall require a finding that the expenditure will be of substantial benefit to marine fisheries or to fish and wildlife, as the case may be, and the governor and council shall request the prior opinion of the fish and game commission in each such case.

IV. In the event a permit is granted with respect to any activity proposed to be undertaken in or adjacent to a prime wetland as mapped, designated and filed pursuant to RSA 483-A: 7, the conservation commission or municipal executive body may appeal said decision to the superior court in the manner set forth in paragraph I of this section. The filing of a motion for rehearing with the board pursuant to RSA 31: 74 shall automatically stay the effectiveness of the board's decision relating to said prime wetland. Said stay shall remain in force until a decision on the motion for rehearing has been issued by the board.

HISTORY

Source. 1967, 215: 1. 1969, 387: 4. —1970. Amended section generally.
1970, 22: 3. 1979, 431: 2, eff. Aug. 22, 1979. —1969. Substituted "water resources
Amendments—1979. Paragraph IV: board" for "New Hampshire Port Authority".
Added.

CROSS REFERENCES

Eminent domain procedure generally, see RSA 498-A.
Fish and game fund generally, see RSA 206: 33 et seq.

Rehearings and appeals from state agencies, departments or officials generally, see RSA 541.

ANNOTATIONS

1. Cited

Cited in *Hilton v. Special Board* (1971) 111 NH 293, 284 A2d 917; *Yoffe v. Special Board*, Chapter 387 (1973) 113 NH 169, 304 A2d 876; *Sibson v. State* (1975) 115 NH

124, 386 A2d 239, overruled on other grounds, *Burrows v. City of Keene* (1981) 121 NH 590, 432 A2d 15; *Hampton v. Special Board of New Hampshire* (1976) 116 NH 644, 365 A2d 741.

483-A: 4-a Administrative Provisions.

I. The board may adopt reasonable rules and regulations to govern its proceedings and otherwise to carry out the purposes of this chapter. The requirement of public hearing in RSA 483-A: 2 may not apply to such minor projects and to such minor improvements of the shoreline of those waters subject to the jurisdiction of this chapter as the board may by reasonable general regulation provide, and as to such projects initial review authority may be delegated to a subcommittee or the staff of the board.

II. The word "person" as it appears in RSA 483-A: 1 and 483-A: 2 shall mean any person, firm, partnership, association, corporation, company, organization or legal entity of any kind including municipal corporations, governmental departments and agencies, or subdivisions thereof.

III. Decisions of the board hereunder shall be consistent with the purposes of this chapter as set forth in RSA 483-A: 1-b. Before granting a permit hereunder, the board may require reasonable proof of ownership by a private landowner-applicant. Decisions of the board may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

IV. Upon written notification to the board by a municipal conservation commission that it intends to investigate any notice received by it pursuant to RSA 483-A: 1, the board shall suspend action upon such notice and shall not make its decision on the notice of a minor project nor hold a hearing on it if a major project until it has received and acknowledged receipt of a written report from said commission, or until 40 days from the date of filing with the town or city clerk of said notice, whichever occurs earlier, subject to an extension as permitted by the board. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of the record of the board. In the event a conservation commission makes a recommendation to the board in its report, the board shall specifically consider such recommendation and shall make written findings with respect to each issue raised therein which is contrary to the decision of the board. If notification by a local conservation commission pursuant to this paragraph is not received by the board within 10 days following the date the notice is filed with the municipal clerk, the board

shall not suspend its normal action, but shall proceed as if no notification has been made.

483-A: 4-a . Administrative Provisions.

[No changes in paragraphs I-IV.]

V. The board shall make written findings of fact in support of all decisions made on applications involving projects other than minor projects and improvements as defined pursuant to RSA 483-A: 4-a. [Amended 1983, 433: 2, eff. Aug. 23, 1983.]

[No changes in paragraphs VI and VII.]

VI. The board shall not grant a permit with respect to any activity proposed to be undertaken in or adjacent to an area mapped, designated and filed as a prime wetland pursuant to RSA 483-A: 7 unless the board first notifies the selectmen or city council, the planning board, if any, and the conservation commission, if any, in the municipality within which the wetlands lie, either in whole or in part, of its decision. Any such permit shall not be issued unless the board is able, specifically, to find on the basis of clear and convincing evidence in the record of the proceedings, and after public hearing, that the proposed activity, either alone or in conjunction with other human activity, will not impair any of the values set forth in RSA 483-A: 1-b. This paragraph shall not be construed so as to relieve the board of its statutory obligations under this chapter to protect wetlands not so mapped and designated.

VII. Notwithstanding any regulations promulgated by the board defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the board; all such related projects shall be subject to a public hearing as provided in RSA 483-A: 2. A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole.

HISTORY

Source. 1970, 22: 3. 1973, 346: 3. 1978, 53: 4, 5. 1979, 431: 3-5, eff. Aug. 22, 1979.

Amendments—1979. Paragraph I: Substituted "initial review authority" for "authority" preceding "may be delegated" in the second sentence.

Paragraph VII: Added.

—1978. Paragraph I: Substituted "RSA 483-A: 2" for "section 2" and "authority may be delegated to a subcommittee or the staff of the board" for "full authority may be delegated to the water resources board" in the second sentence.

Paragraph IV: Added the fourth and fifth sentences.

Paragraph V: Added.

—1973. Paragraph IV: Added.

Revision note. In par. V, deleted "within 180 days after the effective date of this chapter" preceding "adopt regulations" in the first sentence as no longer necessary.

In par. VII, inserted "may" preceding "when considered in the aggregate" in the first sentence and "they are" preceding "a part of the overall scheme" in the second sentence, both for purposes of clarity.

483-A:4-b Posting of Permits and Reports of Violations. Project approval by the board shall be in the form of a permit, a copy of which the applicant shall post in a secured manner in a prominent place at the site of the approved project. The board shall mail a copy of such permit to the selectmen or city council of the town or city where the project is located. Any person proceeding without a posted permit shall be in violation of this chapter. All state, county and local law enforcement officers are directed to be watchful for violations of the provisions of this chapter and to report all suspected violations to the board.

Source. 1970, 22:3. 1973, 346:2. 1975, 55:1. 1983, 433:3, eff. Aug. 23, 1983.

Amendments—1983. Deleted “by certified mail” following “such permit” in the second sentence.

483-A:5 Penalty. Whoever violates any provision of this chapter, whether or not he is the owner of the land in question, shall be liable for the removal of fill, spoil or structure placed in violation hereof and shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. The superior court shall have jurisdiction in equity to restrain a continuing violation of this chapter.

HISTORY

Source. 1967, 215:1. 1973, 529:119. 1977, 419:3, eff. Sept. 3, 1977.

tion” preceding “shall be liable” in the first sentence.

Amendments—1977. Inserted “whether or not he is the owner of the land in ques-

—1973. Amended section generally.

CROSS REFERENCES

Classifications of crimes, see RSA 625:9.
Sentences, see RSA 651.

483-A:5-a Administrative Fine. The wetlands board, after notice and hearing in accordance with the procedures set forth in RSA 541-A, is empowered to impose an administrative fine of up to \$2,000 for each offense upon any person who violates any provision of this chapter. This fine is appealable under RSA 541. Any administrative fine imposed under this section will not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this paragraph shall be placed in the non-lapsing fund authorized in RSA 483-A:6.

Source. 1985, 274:1, eff. Jan. 1, 1986.

483-A:5-b Additional Penalty. State and local law enforcement officials may prosecute any violation of this chapter as a violation. This provision shall not limit the state’s enforcement authority under this chapter.

Source. 1985, 413:3, eff. July 3, 1985.

CROSS REFERENCES

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

483-A:6 Civil Penalty. Failure, neglect or refusal to obey a lawful order of the wetlands board issued relative to activities regulated or prohibited by this chapter, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by this chapter shall be deemed violations of this chapter. The court may, upon separate petition of the attorney general, or in connection with a petition for equity relief, levy upon any person who violates any provision of this chapter, whether or not he is the owner of the land in question, a civil penalty in an amount not to exceed \$5,000. The proceeds of any civil penalty levied pursuant to this chapter shall either be utilized by the wetlands board for the restoration of the area affected by

483-A:6 Civil Penalty.

CROSS REFERENCES

Imposition of administrative fine for violation of chapter, see RSA 483-A:5-a.

ANNOTATIONS

1. Construction

For purposes of this section, denial of a fill permit application meets the requirement of a board order. *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

Issuance of an administrative order by the

New Hampshire Wetlands Board is not a precondition to the imposition of a civil penalty when a person acts in violation of this chapter. *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

2. Petition requesting penalty

Trust as an entity could properly be fined

for disobeying an order of the New Hampshire Wetlands Board, where the specific prayer requesting a penalty against the trustee did not indicate whether the request was directed at her individually or as trustee, and therefore the court could properly find, taking the petition as a whole, that the request was directed at her in her fiduciary role, and therefore at the trust itself. *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

3. Maximum penalty

Total of \$7,000 in penalties assessed against a trust and its agent for disobeying an order of the New Hampshire Wetlands Board did not exceed this section's limit of \$5,000, since the maximum penalty is aimed at each viola-

tor, not each violation, so that it was not error to impose two fines even though their total exceeded \$5,000. *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

4. Defenses

Where defendants were assessed civil penalties for disobeying an order of the New Hampshire Wetlands Board, the defense that they relied on their attorney's advice was properly rejected, where the order in question could only have been overturned on appeal to the superior court, and where the attorney did advise them that action could be taken against them for not obeying the order. *New Hampshire Wetlands Board v. Marshall* (1985) 127 NH 240, 500 A2d 685.

the violation or placed, when deemed appropriate by the board, in a non-lapsing fund held by the treasurer, and which may be expended by the board, subject to the approval of the governor and council, for the purpose of research and investigation relative to wetlands.

HISTORY

Source. 1973, 342: 1. 1977, 419: 4. 1979, 392: 3, eff. Aug. 22, 1979.

Amendments—1979. Substituted "wetlands board" for "water resources board" in the first and third sentences.

—1977. Inserted "whether or not he is the owner of the land in question" preceding "a civil penalty" in the second sentence.

483-A: 7 Local Option; Prime Wetlands.

I. Any municipality, by its conservation commission, or, in the absence of a conservation commission, the planning board, or, in the absence of a planning board, the selectmen or city council, may undertake to designate, map and document prime wetlands lying within its boundaries, or if such areas lie only partly within its boundaries, then that portion lying therein. For the purposes of this chapter, "prime wetlands" shall mean any areas falling within the jurisdictional definitions of RSA 483-A: 1 and 483-A: 1-a that possess one or more of the values set forth in RSA 483-A: 1-b and that, because of their size, unspoiled character, fragile condition or other relevant factors, make them of substantial significance. Such maps or designations, or both, shall be in such form and to such scale, and shall be based upon such criteria, as are established by the board through regulations promulgated in the manner set forth in RSA 483-A: 4-a. I.

II. Any municipal conservation commission or that local body which has mapped and designated prime wetlands in accordance with paragraph I may, after approval by any town or city council meeting, file such maps and designations with the board, which shall accept and maintain them and provide public access thereto during regular business hours. The procedure for acceptance by the local legislative body of any prime wetland designations as provided in paragraph I shall be the same as set forth in RSA 675:2 or 3 as the case may be. [Amended 1985, 103: 6, eff. Jan. 1, 1986.]

Amendments—1985. Paragraph II: Substituted "RSA 675:2 or 3" for "RSA 31:63 or 31:63-a" following "set forth in" in the second sentence.

LIBRARY REFERENCES

ALR

Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR4th 756.

Protection of Sand Dunes**483-A:8 Vehicles Prohibited.**

I. No person shall destroy, raze, deface, reduce, alter, build upon or remove any sand or vegetation from any sand dune in this state; provided, however, that any person may remove sand which blows or drifts onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or which blows or drifts in, on, or around buildings or other structures owned by the person.

II. Except as set forth in paragraph III, no person shall operate or ride any mechanized vehicle on any sand dune in the state of New Hampshire.

III. This section shall not apply to:

- (a) Police vehicles or fire vehicles.
- (b) Vehicles used in cases of emergency.
- (c) Authorized maintenance vehicles when performing maintenance duties.

(d) Vehicles used by commercial fishermen or commercial lobstermen when engaged in activities related to fishing or lobstering.

Source. 1985, 413: 2, eff. July 3, 1985.

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CHAPTER WT 600 COASTAL WETLANDS

PART Wt 601 DEFINITIONS

Wt 601.01 "Tidal wetlands" means lands that are transitional between upland areas and tidally influenced water bodies, as well as tidally influenced water bodies and the lands submerged by them, areas joined with tidally influenced water bodies now or in the past, and areas that normally support, or are capable of supporting certain hydrophytic vegetation (See RSA 483:A-1-a, I).

Source. #2923, eff 12-10-84; amd by #4297, eff 7-23-87

Wt 601.02 "Hydrophytes" means plants that are adapted for life in water, in saturated soils, and in the littoral zone.

Source. #2923, eff 12-10-84

Wt 601.03 "Hydric soils" means soils that are wet long enough to periodically produce anaerobic conditions.

Source. #2923, eff 12-10-84

Wt 601.04 "Ocean bottom" means all landforms submerged by the sea and its extensions inland within the jurisdictional boundaries of the State of New Hampshire up to mean low water. Site specific terms relative to "Ocean Bottom" are:

(a) "Shoal" means portions of the ocean bottom which are usually submerged, consisting of unconsolidated material, with insufficient depth to allow safe navigation for some watercraft.

(b) "Vegetated shallows" means inundated, subtidal areas that normally support communities of rooted aquatic vegetation.

(c) "Pools" means deep areas of a watercourse characterized by a slower stream velocity, a relatively smooth surface, and usually finer bottom materials.

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(d) "Reefs" means narrow ranges or ridges of rocks, sand, gravel, and shellfish or other organisms, elevated above the surrounding ocean bottom, composed of either loose or wave resistant materials.

(e) "Tidal rivers and creeks" means natural surface streams whose lower parts, for considerable distances, are influenced by the tide of the waterbody into which they flow; with creeks being the smaller and less navigable of the two.

(f) "Coastal bars" means elongated offshore ridges, banks, or mounds of sand, gravel, or other unconsolidated material, submerged at least at high tide, and built up by the action of waves or currents on the ocean bottom and beaches.

(g) "Stream bars" means elongated deposits of unconsolidated sediments formed by a decrease in velocity in the channel, along the banks, or at the mouth of a stream.

Source. #2923, eff 12-10-84

Wt 601.05 "Buffer zone" means the portion of the shore affected by the waves, currents, and tides. It is an area contiguous with the line of transition between a wetland and an upland which provides sufficient space to prevent an adverse impact on the integrity and value of the wetland and extends a distance of 100 feet from the highest observable tide line or the landward limit of the tidal flow, provided that the area is within the board's jurisdiction as defined in Wt 603.02 and RSA 483-A:1-a, I. Site specific terms relative to "Buffer Zone" are:

(a) "Flats" means relatively level landforms composed of unconsolidated mineral and organic sediments, usually continuous with the shore and that are alternately flooded and exposed by the tides.

(b) "Beaches" means the sloping shores of water bodies created by wave, tide, current, and storm action, consisting of sand, gravel, cobble, and sediments extending from low water to the upland.

(c) "Rocky shores" means landforms consisting of bedrock, ledge, boulder or rock-strewn areas, located partially or wholly in the littoral zone.

(d) "Low saltmarsh" means a regularly flooded intertidal area dominated by salinity-tolerant vegetation such as Spartina alterniflora, saltmarsh cordgrass, and underlain by saltmarsh peat with coarse mineral sediments and relatively low amounts of organic materials.

(e) "High saltmarsh" means an irregularly flooded intertidal area characterized by salinity-tolerant vegetation. Dominant species include Spartina patens, salt meadow cord grass, Juncus gerardii, black grass, Distichlis spicata, spike grass. High marsh often contains pannes, which are

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pool-like depressions. High marsh peat has a high level of organic materials and relatively fine sediments.

(f) "Tidal drainage channels" means natural streams and rivulates that serve to drain tidal wetlands of salt and brackish water as the tide drops and at low tide, as well as fresh water from springs and upland seepage. Though they may not flow at times, they develop and maintain defined channels.

(g) "Salt ponds" means relatively deep, enclosed bodies of salt water that may be flowed by tidal waters only on extreme high tides or storm surges, or experience regular tidal influence.

(h) "Swamps" means regularly or irregularly flooded areas characterized by the presence of scrub-shrub type vegetation such as Carex stricta, tussock sedge, and trees, such as Chamaecyparis thyoides, Atlantic white cedar, as well as salinity tolerate or buffer zone species.

(i) "Dunes" means hills, mounds, or ridges of sand formed by wind or overwash. Dune areas are characterized by foredune, backdune, and duneslack sections.

(j) "Swales" means low lying or depressed landforms which contain shallow standing water or saturated soil, and may support salinity tolerant hydrophytes or buffer zone species.

(k) REPEALED

Source. #2923, eff 12-10-84; amd by 3077, eff 7-26-85; amd by #4297, eff 7-23-87

Wt 601.06 "Lowlands formerly connected to tidal waters" means lowlands whose connections to tidal waters are restricted or obstructed by road fills, dikes, or other manmade facilities, or landforms created by natural actions or processes.

Source. #2923, eff 12-10-84

Wt 601.07 "Mean high water" means the average height of all the high waters recorded at a given place over the 19 year tidal epoch cycle or a compute equivalent period.

Source. #2923, eff 12-10-84

Wt 601.08 "Mean low water" means the average height of all the low waters

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recorded at a given place over the 19 year tidal epoch cycle or a computed equivalent period.

Source. #2923, eff 12-10-84

Wt 601.09 Projects.

(a) "Groins" means rigid structures, generally built perpendicular to the shoreline to protect the shore from erosion, or to create or augment beaches by trapping sand washing along shores.

(b) "Jetties" means structures extending into a body of water to influence currents, protect a harbor, or to prevent shoaling which occurs when sand washing along shore encounters an inlet.

(c) "Seawalls" means massive walls constructed along the shoreline, designed to withstand the direct energy of ocean waves by reflecting it back to sea.

(d) "Breakwaters" means offshore structures that protect harbors, anchorage, beaches, or other areas by breaking the force of waves and currents.

(e) "Revetments" means sloped, armored facings of layered stone, concrete, or other hard materials built to protect and sustain embankments by dissipating wave energy.

(f) "Bulkheads" means vertical retaining walls built along a waterfront to contain fill.

(g) "Dikes" means banks of earth or fill built to confine or control water, often used to claim coastal wetlands for development or agricultural purposes.

(h) "Tide dams" means those structures used to impound coastal waters and regulate the height or elevation of the impounded waters.

(i) "Tide gates" means those structures or devices used to prevent high tidal levels and storm surges from reaching upstream areas of coastal wetlands and waterbodies.

(j) "Floats" means floating platforms anchored near a shoreline for watercraft, commercial or recreational use.

(k) "Piers" means elongated structures extending into the water, generally perpendicular to the shore, for use as a berth for watercraft. Piers consist of solid or filled structures, platforms on piles or cribs, or floating platforms, or various combinations of these.

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(l) "Docks" means artificial enclosures for the reception of watercraft, or the waterway between two piers for the reception of watercraft.

(m) "Wharves" means those structures built parallel to or lengthwise along the shore so watercraft may berth alongside.

(n) "Moorings" means temporary or movable devices, such as buoys, to which watercraft can be made fast or secured.

(o) "Cribs" means enclosures or framework, often filled with heavy or coarse material, used to support structures.

(p) "Piles" means long, slender columns of timber, steel, concrete, stone, or other rigid materials driven or jetted into beaches, banks or bottoms of waterbodies.

(q) "Open pile construction" means piles installed at such distances from each other to allow free flow and passage of water and marine life.

(r) "Dolphins" means rigid structures of a permanent nature, installed in beaches, banks, or the bottoms of water bodies, to which watercraft can be made fast or secured, or to protect an area from ice flows. Dolphins may be constructed with piles, pile clusters, caissons, concrete pillars, or structures of a similar nature.

Source. #2923, eff 12-10-84

Wt 601.10 "Jurisdiction" means those wetland areas and submerged lands that the wetlands board is charged with protecting and preserving under RSA 483-A.

Source. #2923, eff 12-10-84

Wt 601.11 "Special aquatic habitats" means wetland features that present attractive qualities as habitat for fish and wildlife by providing structure on the ocean bottom or in the littoral zone; or a degree of shelter from currents, wind, or predators; or are areas where food is swept by or deposited. Examples of special aquatic habitats are pools, bedrock outcrops (ledges); boulder-strewn areas such as tidal rapids; and creek, river and estuary outlets where upwellings and rip-currents may occur.

Source. #2923, eff 12-10-84

Wt 601.12 Descriptions. The definitions contained in this part are to be used in supplement to sections Wt 101.04 through Wt 101.12 and Wt 101.16 through Wt 101.18.

Source. #2923, eff 12-10-84

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PART Wt 602 CRITERIA FOR DECISIONS

Wt 602.01 Nutrients. Projects can affect the value of wetlands as sources of nutrients for finfish, crustacea, shellfish, and wildlife.

(a) Any wetland where algae, plankton, shellfish, insects, annelids, crustacea, or finfish may be found is a source of nutrients for finfish.

(b) Any wetland where shellfish, annelids, algae, vegetation, or detritus from other life forms may be found is a source of nutrients for crustacea.

(c) Any wetland where plankton may be found is a source of nutrients for shellfish.

(d) Any wetland where algae, annelids, shellfish, vegetation, insects, crustacea, finfish, or wildlife may be found is a source of nutrients for wildlife.

(e) Coastal wetlands are distinctively able to produce nutrients in the form of dead plant materials present in detritus. Detritus is the base of the nutrient chain, and therefore is valuable to all life forms in coastal wetlands.

Source. #2923, eff 12-10-84

Wt 602.02 Habitats. Projects can affect the value of wetlands as habitats and reproduction areas for plants, fish, and wildlife.

(a) Wetlands that are habitat for plants are high and low salt marsh, swamps, banks, dunes, swales, rocky shores, vegetated shallows, and salt ponds.

(b) Wetlands that are habitat for fish are shoals, reefs, coastal bars, stream bars, pools, ocean bottom, low salt marsh, tidal rivers and creeks, flats, rocky shores, and vegetated shallows.

(c) Wetlands that are habitat for wildlife are high and low salt marsh, swamps, tidal rivers and creeks, beaches, dunes, swales, flats, tidal drainage channels, salt ponds, banks, and rocky shores.

Source. #2923, eff 12-10-84

Wt 602.03 Commerce, Recreation, and Aesthetic Enjoyment. Projects can eliminate, depreciate, or obstruct the commerce, recreation and aesthetic enjoyment of the public.

(a) Wetlands that normally provide public commerce are ocean bottom, reefs, coastal bars, shoals, stream bars, flats, vegetated shallows, pools,

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low saltmarsh, high saltmarsh, swamps, salt ponds, tidal rivers and creeks.

(b) Wetlands that normally provide recreation for the public are ocean bottom, reefs, shoals, coastal bars, stream bars, flats, beaches, rocky shores, vegetated shallows, tidal rivers and creeks, pools, salt ponds, low salt marsh, high salt marsh, swamps, swales, and dunes.

(c) Wetlands that normally provide aesthetic enjoyment for the public are littoral zones, dunes, swales, swamps, high salt marsh, low salt marsh, salt ponds, tidal rivers and creeks, rocky shores, beaches, and ocean bottom.

Source. #2923, eff 12-10-84

Wt 602.04 Groundwater Levels. Projects can affect groundwater levels.

(a) Excessive development of the coastal areas can alter runoff, absorption, infiltration, and recharge patterns, which by itself, or in conjunction with excessive withdrawal of fresh groundwater, can lead to saltwater intrusion, contamination, and depletion of fresh groundwater and lowering of fresh groundwater levels.

(b) Excessive bulkheading or filling in coastal wetlands that serve as discharge areas for fresh groundwater may have a damming effect with respect to groundwater flow and its subsequent elevated groundwater levels.

Source. #2923, eff 12-10-84

Wt 602.05 Stream Channel and Runoffs. Projects can affect stream channels and their ability to handle the runoff of waters. The effects on stream channels may be:

- (a) Impoundment of waters.
- (b) Riffling of waters.
- (c) Increase of streamflow velocities or volume by projects.
- (d) Decrease of streamflow velocities or volume by projects.
- (e) Displacement of streamflow.
- (f) Destruction of stabilizing vegetation.
- (g) Redirection of currents.
- (h) Redirection of wave energy.

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(i) Erosion.

Source. #2923, eff 12-10-84

Wt 602.06 Flood Waters and Silt. Projects can affect the ability of wetlands to absorb flood waters and silt, thus increasing flood damage and the silting of open water channels.

Source. #2923, eff 12-10-84

(a) Wetlands that absorb flood waters are high and low salt marsh, swamps, swales, tidal drainage channels, and salt ponds.

(b) Wetlands that absorb silt are high and low salt marsh, swamps, beaches, flats, shoals, and vegetated shallows.

Source. #2923, eff 12-10-84

Wt 602.07 Other Interests of the General Public. Projects can affect other interests of the general public in wetlands. Some of these other interests are:

(a) Energy Absorption. Wetlands that absorb and dissipate energy from waves and storms are high and low salt marsh, swamps, beaches, rocky shores, coastal dunes, flats, coastal bars, salt ponds, and banks.

(b) Thermal Exchange. Wetlands that serve thermal exchange are high and low salt marsh, flats, beaches, shoals, swamps, vegetated shallows, tidal rivers and creeks, and tidal drainage channels.

(c) Sediment Supply. Wetlands that are sources of sediment for beach and flat nourishment are tidal rivers and creeks, buffer zones, banks, and littoral zones.

Source. #2923, eff 12-10-84

Wt 602.08 Projects in Lowlands Formerly Connected to Tidal Waters. The nature and value of these areas is widely variable and functional to the extent of:

(a) Tidal restriction, and,

(b) The length of time since the tidal restriction occurred.

(c) The capability of such areas to support saltwater wetlands vegetation as defined in Wt 601.04(b) if tidal circulation is restored, and

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(d) The possibility of restoring the original tidal flow or providing mitigating measures.

Source. #2923, eff 12-10-84

PART Wt 603 CRITERIA FOR JURISDICTION

Wt 603.01 Jurisdiction of the Board. Jurisdiction over an area is determined by meeting one of the 2 following sets of criteria:

Wt 603.02 Lands Affected by Tidal Flow and Submergence. The board shall hold jurisdiction over all lands flowed or submerged by mean high water as determined to the locality, based on the most recent published tables and standards of the National Ocean Survey, or its successor agency.

Wt 603.03 Lands Bordering Tidal Waters. The board shall hold jurisdiction over:

(a) Lands subject to tidal action which border on tidal waters including areas connected to, or formerly connected to tidal waters;

(b) Whose surface does not exceed three and one half feet above mean high water as determined to the locality, and;

(c) Are capable of supporting, or do support any of the vegetation listed in RSA 483-A:1-a (see Appendix B). Soils capable of supporting this vegetation include, but are not limited to, Hemists, Aquaents, and Aquaeps that have either sulfidic materials or a sulfuric horizon as specified in the soil taxonomy used by the National Cooperative Soil Survey. These are wet organic or mineral soils subject to tidal inundation. Examples of common soil series area, Ipswich, Matunuch, Pawcatuck and Wet Brook.

Source. #2923, eff 12-10-84

PART Wt 604 CRITERIA FOR EVALUATION OF PROJECTS

Wt 604.01 Major Projects. Major projects are those which meet any one or more of the following criteria:

(a) Projects located in sand dunes or inundated, or periodically inundated, tidal wetlands, or the area which is within 100 feet of the highest observable tide line or the landward limit of tidal flow, whichever is further landward, provided that the area is within the board's jurisdiction as defined in Wt 603.02 and RSA 483-A:1-a, I.

(b) Construction of or increase in dedicated water area of any marina or community docking system.

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(c) A number of associated projects considered in total and deemed major by a majority vote of the board.

(d) Projects having significant impact on the criteria for evaluation in Part Wt 605.

(e) A project deemed major by vote of the board based on uniqueness of the project, wetland, or location.

Source. #2923, eff 12-10-84; amd by #4297, eff 7-23-87

Wt 604.02 Minor Projects. Minor projects are those that are not major.

Source. #2923, eff 12-10-84

Wt 604.03 Minimum Impact Projects. Minimum impact projects include those minor projects not located within reefs, dunes, vegetated shallows, special aquatic habitats, or the area of the buffer zone which is within 100 feet of the highest observable tide line or the landward limit of the tidal flow, provided that the area is within the board's jurisdiction as defined in Wt 603.02 and RSA 483-A:1-a, I. Minimum impact projects must have a minimal impact on criteria for evaluation, meet design and construction criteria, and not exceed or violate any of the following criteria:

(a) Projects shall be for private, noncommercial purposes, proposed by individual shorefront property owners to gain boating access to waterways adjacent to their residence.

(b) Repair or replacement of bulkheads at the original location shall not exceed 2 feet of additional width. Frequent repair and replacement shall be classified as a fill project.

(c) Seasonal and permanent piers on pilings, that do not exceed 6 feet in width and 30 feet in length, and are at least 5 feet above the elevation of the wetland bottom. Piers must be perpendicular to the shoreline and 20 feet from the abutting property lines and their imaginary extensions into the water.

Source. #2923, eff 12-10-84; amd by #4297, eff 7-23-87

Wt 604.04 Part Taking Precedence. Part Wt 604 supercedes part Wt 302 when projects are located in coastal wetlands.

Source. #2923, eff 12-10-84

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PART Wt 605 CRITERIA FOR EVALUATION OF PROJECTS

Wt 605.01 Tidal Wetlands. Projects and alterations in tidal wetlands shall be evaluated by the following criteria for approval of permit applications:

(a) Proof of stable foundation conditions and the design and method to be used for construction.

(b) Creation of stagnation.

(c) Harm of disturbance of significant populations of finfish, crustacea, shellfish, and wildlife, or their habitat.

(d) Threat to or impact on the navigation, recreation, or commerce of the general public.

(e) Decrease in the ability of wetlands to dissipate wave and storm energy.

(f) Redirection or reflection of current or wave energy so as to cause erosion, damage or hazards.

(g) Creation of turbidity deleterious to finfish, crustacea, shellfish, wildlife and vegetation.

(h) Interference with the cycles of beach and flat replenishment and longshore sediment drift.

(i) Destruction or damage to significant vegetation or stabilizing vegetation.

(j) Obstruction or impence of the free passage of anadromous and catadromous migratory fish.

(k) Unreasonable formation of shoals, bars, or other alluvial deposits by alterations of currents, flows, or velocity.

(l) Intrusion into a coastal wetland area. Projects considered for approval shall be located at the wetlands' edge, where previous projects define a line of encroachment.

(m) Harm or disturbance to threatened or endangered species.

(n) Harm or disturbance to species in the extremities of their ranges.

(o) Impact upon the value of the sites included in the latest published edition of the National Register of Natural Landmarks, or eligible

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sites or areas named in acts of congress or presidential proclamations as national rivers, national wilderness areas, national lakeshores, and such areas as may be established under federal, state, or municipal laws for similar and related purposes, such as estuary and marine sanctuaries.

- (p) Obstruction of public rights of passage in a littoral zone.
- (q) Unreasonable impidence or obstruction of tidal drainage channels.
- (r) Depreciation of the aesthetic character of the land.
- (s) Degradation of water quality.
- (t) Unnecessary hardship as defined by Wt 101.20 if the permit is not granted.

Source. #2923, eff 12-10-84; amd by #4297, eff 7-23-87

Wt 605.02 REPEALED

Source. #3077, eff 7-26-85; rpld by #4297, eff 7-23-87

PART Wt 606 DESIGN AND CONSTRUCTION CRITERIA

Wt 606.01 Dredge Criteria.

- (a) Dredging shall be done between November 15 and March 15, and shall not be permitted during a fish migration or larval setting stage of shellfish.
- (b) Dredging shall not impair the abilities of beaches and rocky shores to dissipate wave energy.
- (c) Depth and width of a channel shall be minimized, but shall accommodate the largest vessel expected to pass through.
- (d) Dredging shall not disturb contaminated layers of sediment, unless permitted with appropriate conditions.
- (e) Dredging, mining, and removal operations on coastal and stream bars shall not interfere with cycles of beach and flat replenishment.
- (f) Projects shall be dredged such that all portions are adequately flushed.
- (g) Near shore areas shall not be deepened to the point that the height of the waves impacting the littoral zone is increased.

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(h) The channel axis shall not be parallel to the wave lines as directed by major storms.

(i) Siltation curtains shall be used to contain turbidity as required by the board.

(j) Where dredging is flanked by beaches, a sand by-pass or replenishment system shall be developed to replace littoral transport to the downdrift beach.

Source. #2923, eff 12-10-84

Wt 606.02 Fill Criteria.

(a) Fill shall be distributed in conformance with existing topography.

(b) Fill shall not cause shoaling or unreasonable loss of water depth.

(c) Fill shall not significantly increase wave height.

(d) Fill shall be compatible with existing grain size and distribution.

(e) Fill shall be staked and measured by the staff of the wetlands board as required by the board.

Source. #2923, eff 12-10-84

Wt 606.03 Breakwater Criteria.

(a) Breakwaters shall not hinder or prevent proper flushing of coastal areas.

(b) Breakwaters shall not create current or waves that present an unreasonable danger to small watercraft.

(c) Breakwaters shall not create nor cause sediment deposits.

(d) Breakwaters shall meet the criteria of Wt 402.07.

Source. #2923, eff 12-10-84

Wt 606.04 Dikes, Tide Dams, and Tide Gates Criteria.

(a) Projects shall not destroy or damage by flooding, fresh-water inundation, or de-watering any significant vegetation or habitat of finfish, crustacea, shellfish, or wildlife.

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(b) Adequate passage facilities for marine life shall be provided and maintained around or over dikes, tide dams, and tide gates.

(c) Adequate volume and rate of flow shall be maintained over or through the dams or tidal gates at appropriate times to attract and allow migrating fish entry and exit to the confined reaches of the water body.

(d) Projects shall not unreasonably impede or prevent the conveyance of run-off and flood waters.

(e) Projects shall not cause the permanent inundation of coastal wetlands.

Source. #2923, eff 12-10-84

Wt 606.05 Piers, Docks, Wharves, and Floats Criteria.

(a) Projects shall be designed such that supporting cribs, piles, and caissons occupy no more than five percent of total volume under the structure at mean high water to allow most wave and current energy to pass through, and prevent deepening of the area.

(b) Piles and cribs shall not be placed any closer than twelve feet apart.

(c) Superstructures shall not completely shield the underlying area from direct sunlight.

(d) All floats must be anchored, held by piles, or made fast to the shore or dock, to prevent substantial changes in their positions.

(e) Floats that are not linked to the shore by ramps or piles, but are anchored, shall not exceed 400 square feet.

(f) All floats and floating structures or sections thereof, must be positioned waterward of any vegetated wetlands or vegetated shallows.

(g) Piers shall meet the criteria of Wt 402.01, 402.04, 402.05, and 402.06.

Source. #2923, eff 12-10-84

Wt 606.06 Groin and Jetty Criteria.

(a) Groins.

(1) Groins shall only be used where no down drift sediment sources exist.

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(2) Groins shall be filled to entrapment capacity with sediment similar to sediment on the site.

(3) Groins shall not be located in or near significant vegetation or habitat for finfish, crustacea, shellfish and wildlife due to the turbidity caused by such structures.

(4) Groins shall be of adequate height to trap sediment completely.

(5) Groins shall not prevent proper flushing of coastal areas.

(6) Groins shall meet the criteria of Wt 402.07.

(b) Jetties.

(1) Jetties shall be the minimum length necessary to reduce shoaling of the inlet.

(2) Jetties shall be an adequate height to trap sediment completely.

(3) A system of replenishment shall be designed and maintained to prevent the deepening of down drift areas due to the interruption of longshore sediment drift.

(4) Jetties shall not prevent proper flushing of coastal areas.

(5) Jetties shall meet the criteria of Wt 402.07.

Source. #2923, eff 12-10-84

Wt 606.07 Seawall, Revetment, and Bulkhead Criteria.

(a) Projects shall be located as close as possible to the coastal

b. Slope of projects shall be flatter than three to one, where possible.

c. Projects with slopes steeper than three to one shall require sediment replacement by the owner on a periodic basis, because of toe scour.

(d) Face of projects shall be rough to minimize reflected wave energy.

(e) Projects shall overlap wetlands to the minimum extent necessary to achieve structural stability and desired slope.

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(f) Only the minimum amount of fill to achieve stability of the structure shall be permitted.

(g) Projects shall include weepholes to allow seepage of groundwater.

(h) Projects shall not reflect or re-direct currents or wave energy towards adjacent wetlands or structures.

Source. #2923, eff 12-10-84

Wt 606.08 Mooring and Marina Criteria.

(a) Projects shall be located waterward of wetlands vegetation and vegetated shallows.

(b) Projects shall not be located in areas where tides, currents, and waves may present a hazard.

(c) Projects shall not remove unreasonable amounts of water space in an area from accessibility to water craft.

(d) Moorings as defined in Wt 601.40 are not within the jurisdiction of the wetlands board. Inquiries should be directed to the port authority or harbor master.

(e) Marinas shall meet the criteria of Wt 402.12.

Source. #2923, eff 12-10-84

Wt 606.09 Pile, Crib, and Caisson Criteria.

(a) Open piles shall be the preferred method of construction.

(b) Cribs and caissons shall be allowed only when critical need can be proven.

(c) Crib and caisson supported structures shall be authorized only when the applicant offers clear evidence that alternative constructions would be impractical.

(d) Cribs and caissons shall not be allowed in areas of significant vegetation or wildlife, fish, or crustacean habitat.

(e) Materials used for fill within any crib or caisson shall be of a minimum size that exceeds the largest opening in the walls.

Source. #2923, eff 12-10-84

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Wt 606.10 Platform and Rig Criteria. Projects shall be constructed to withstand high velocity and high hazard storm, wind, wave, and current conditions.

Source. #2923, eff 12-10-84

Wt 606.11 Intake and Outflow Structure Criteria.

(a) Velocity of inflow or outflow shall not cause scouring or erosion of wetlands, turbidity or disturbance of vegetation, finfish, crustacea, shellfish, or wildlife.

(b) Intake and outflow structures and the flows resulting shall not endanger the navigation, recreation or commerce of the public.

Source. #2923, eff 12-10-84

Wt 606.12 Utility Line, Pole, Tower, and Antennae Criteria.

(a) Projects shall not endanger finfish, shellfish, crustacea, or wildlife attracted to wetlands areas.

(b) Projects shall not significantly disturb underground or surface water flow.

(c) Projects shall not endanger the navigation, recreation, or commerce of the general public.

Source. #2923, eff 12-10-84

Wt 606.13 Boardwalk Criteria.

(a) Projects shall be of light construction.

(b) Projects shall be elevated such that no area under the structure shall be completely shaded from the sun.

(c) Superstructures of projects shall be of slatted construction to allow circulation of air and water, and allow the penetration of light.

Source. #2923, eff 12-10-84

Wt 606.14 Trails, Roadways, Access, and Boat Ramps.

(a) Projects shall be of the minimum size necessary to bear expected vehicular traffic.

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(b) Projects shall be of the lightest construction possible and elevated on piles where possible.

(c) Access projects shall be temporary.

Source. #2923, eff 12-10-84

Wt 606.15 Boathouses and Shoreline Slips. Boathouses in or over the waters and wetlands and slips dug into the shore shall not be approved.

Source. #2923, eff 12-10-84

Wt 606.16 Canopies. Canopies shall meet the criteria of Wt 402.08.

Source. #2923, eff 12-10-84

Wt 606.17 Part Taking Precedence. Part Wt 606 supercedes Part Wt 402 when projects are located in coastal wetlands. Projects exceeding or violation these criteria shall not be classified as minimum impact.

Source. #2923, eff 12-10-84

PART Wt 607 APPROVAL CONDITIONS

Wt 607.01 Mats. Mats shall be used when heavy equipment must cross vegetated wetland areas. Removal of mats shall be performed promptly upon completion of project. Projects requiring mats shall be performed in the fall or winter.

Source. #2923, eff 12-10-84

Wt 607.02 Maintenance. Projects shall be maintained in a manner satisfactory to the board. Maintenance will be such that the structure shall conform to reasonable safety and aesthetic standards. Failure to so maintain shall be cause for an order to remove the entire project.

Source. #2923, eff 12-10-84

Wt 607.03 Buffer Zones. The board may request that adequate buffer zones be preserved to protect wetlands from impact by projects.

Source. #2923 eff 12-10-84

Wt 607.04 Coffer Dams. Coffer dams and other water control devices constructed in conjunction with the repair or maintenance of existing projects shall be removed promptly upon completion of repair or maintenance.

Source. #2923, eff 12-10-84

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Wt 607.05 Slope Stabilization. The board shall require that reasonable measures are used to stabilize slopes affected by projects. These may include grading, vegetating, rip-rap, revetment, and other appropriate measures.

Source. #2923, eff 12-10-84

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CHAPTER Wt 400 SHORELINE STRUCTURES

PART Wt 401 PURPOSE AND POLICY

Wt 401.01 Purpose. The purpose of these criteria is to protect the best interests of the state of New Hampshire through the establishment of approved locations and minimum requirements for design and construction of wharves, piers, docks, floats, breakwaters, retaining walls, canopies, and boathouses to prevent unreasonable encroachment on the surface waters of the state.

Source. #2271, eff 1-10-83; ss by #2924,
eff 12-11-84

Wt 401.02 Policy. In preserving the integrity of the surface waters of the state, it is the policy of this board that all structures shall be constructed so as to insure safe navigation, to minimize alterations in prevailing currents, to minimize the reduction of water area available for public use, to avoid changes in subsurface conditions that would be deleterious to fish and wildlife habitat, and to avoid changes in water movements that might cause erosion to abutting properties. Structures shall be allowed only for the purpose of boating and not for the transfer of any activities usually associated with land (i.e. sunbathing, picnicking, etc.) to structures over the waters.

Source. #2271, eff 1-10-83; ss by #2924,
eff 12-11-84

PART Wt 402 DESIGN AND CONSTRUCTION CRITERIA

Wt 402.01 Configuration. The standard configuration of piers shall be narrow, rectangular and erected perpendicular to the shoreline. Alternative configurations, such as arrangements shaped like the letters L, T, F, and U, may be considered when evidence has been provided, in writing by the applicant, that enforcement of this section would represent a hazard to safety due to wind or other weather conditions, or that other natural conditions such as water depth would prevent the use of the waterfront by any motorized boat,

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or that the property has a unique hardship which requires an alternative configuration, or that the applicant's use of the waters is highly unusual and not adverse to public interest.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #3075, eff 7-26-85

Wt 402.02 Width. The width of the deck of a pier shall not exceed 6 feet. In lakes and ponds of less than 1,000 acres in size the width shall be limited to 4 feet.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84

Wt 402.03 Length. The length of the deck of a pier shall not exceed 30 feet. In lakes and ponds of less than 1,000 acres in size the length shall be limited to 20 feet.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84

Wt 402.04 Exception to Dimensions. Larger dimensions than those stated in Wt 402.02, Wt 402.03 and Wt 402.07(a) may be allowed when evidence has been provided, in writing by the applicant, that application of those standards would represent a hazard to safety due to wind or other weather conditions, or that other natural conditions such as water depth would prevent the use of the waterfront by any motorized boat, or that the property has a unique hardship, not shared generally by nearby properties that requires larger dimensions, or that the applicant's use of the water is highly unusual and is not adverse to the public interest.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85

Wt 402.05 Seasonal Piers. Seasonal piers which are designed to be installed at the beginning and removed at the end of the boating season are the preferred mode of construction. Seasonal piers, once permitted, require no further action unless there is a change in size, location, or configuration.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84

Wt 402.06 Permanent Piers.

(a) First priority. The preferred method for construction of permanent structures is the use of pilings because this method offers the best preservation of and least disturbance to the environment. All applications for permanent installations shall indicate that reasonable investigations have been undertaken to determine the impossibility of driving pilings before

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alternate construction methods will be approved. Such investigations may include trial driving by commercial equipment, probings and experience in construction of adjacent wharves or docks. The minimum spacing for pile bents shall be 12 feet center to center. The total length of any proposed pier measured from the existing shoreline toward the water body shall be subject to express review and recommendations of the department of safety.

(b) Second priority. Where it has been established to the satisfaction of the board that pilings cannot be used, crib-type supports may be approved. The maximum size of cribs for water depths of up to 6 feet shall not exceed 6 feet long by 6 feet wide and of such height as is necessary to support the wharf above the water level. The crib itself may be of timber, prefabricated concrete, or other approved members securely fastened together and of such size and spacing necessary to completely contain the stone ballast or other approved fill material. The side dimensions of cribs may be increased one foot for every additional foot of water depth above 6 feet. The minimum clear spacing between cribs shall be 12 feet.

(c) Third priority. Special designs such as caissons, concrete supports, or prefabricated cofferdams are of a highly specialized nature and shall be considered on an individual basis by the board.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84

Wt 402.07 Breakwaters. Breakwaters may be approved when exposure to winds and waves justify the need thereof. Construction may be of stone, concrete, wood, or other approved materials consistent with the individual conditions of each site. Applications may be considered, recommended to Governor and Council under RSA 482:41-f or approved by the board on an individual basis.

(a) Standard breakwaters when measured at normal full lake elevation, shall not exceed 50 feet in length from the shore and height shall not exceed 3 feet in elevation. Top width shall not exceed 3 feet. No portion of the breakwater shall be placed within 10 feet of an abutting property line or its imaginary extension into the water.

(b) When conducting rock removal to obtain material for breakwater construction, the area of removal shall be limited to waters before the applicant's shore and is not to exceed a distance into the lake of more than twice the length of the approved breakwater. Only when specifically approved by the board may rock removal as a source of breakwater material be conducted in any other area of jurisdiction.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by 3075, eff 7-26-85

Wt 402.08 Canopies. As a general policy, canopies shall be constructed so as not to obstruct views from adjacent property or interfere with boating

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or swimming safety. The fabric covering of a canopy shall be removed from locations over surface waters during seasons of non-use.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84

Wt 402.09 Boathouses. Boathouses located in or over the waters shall not be approved. A boathouse located over a dredged inlet within the property of the applicant may be approved.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84

Wt 402.10 Location. Unless otherwise permitted by the board, no structure shall be erected nearer than 10 feet from the abutting property line or its imaginary extension into the water. The board may increase the distance if, in its opinion, the proposed location represents a danger to other waterfront activities, navigation hazard, or is adverse to the interests of the general public.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85

Wt 402.11 Maintenance. All structures constructed under these criteria shall be maintained in a manner satisfactory to the board. Maintenance will be such that the structure shall conform to reasonable safety and aesthetic standards. Failure to so maintain shall be cause for an order to remove the entire structure.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84

Wt 402.12 Exception. REPEALED

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; rpld by 4038, eff 4-10-86

Wt 402.13 Frontage Less Than 75'. To lessen congestion, improve public safety and navigation, protect neighboring property values and provide sufficient area for construction of facilities, docks or piers permitted on property with less than 75 feet of water frontage shall be no larger than 4 x 24 feet.

Source. #3075, eff 7-26-85

Wt 402.14 Frontage Over 75. To lessen congestion, improve public safety and navigation, protect neighboring property values, provide sufficient area for construction of facilities, provide adequate area for boat maneuvering, and protect health, safety, and general welfare, there shall be a minimum of

75' of water frontage on the property for the first two-slip structure, and an additional 75' of water frontage on the property for each additional boating slip or securing location on a structure in jurisdiction for non-commercial use. This section shall not be interpreted to prevent construction of a pier on lots with less than 75' of frontage as provided in Wt 402.13

Source. #3075, eff 7-26-85; ss by 4038, eff 4-10-86

Wt 402.15 Exceptions To Frontage Criteria. The standards in Wt 402.13 & 402.14 may be excepted when evidence has been provided, in writing by the applicant, that application of those standards would represent a hazard due to wind or other weather conditions, or that the property has a hardship requiring the exception, or that the sole practical method of transportation to the property is by boat, or that the applicant's use of the waters is in the public interest, or that the construction has been modified to meet the considerations contained in Wt 401.02, 402.13, and 402.14

Source. #3075, eff 7-26-85

Wt 402.16 Commercial Use - Municipal Review. Any new docking facility or additional docking or similar improvement, excluding repairs, or replacements without expansion, that has any portion under commercial use Wt 101.22 shall comply with all local land-use controls for marinas, or appropriate non-residential land-use classification. Said permit, approval, or letter from the applicable local land use board or board of selectmen indicating that a permit is not required under local regulations shall be received prior to decision by the wetlands board. Said local regulations shall not restrict the sole and exclusive authority of the state to permit construction over, or dredge and fill in great ponds or state owned water bodies. If a municipality forwards a denial or does not respond to the board, the applicant may request a public hearing to waive the provisions of this section.

Source. #4038, eff 4-10-86

Wt 402.17 Marinas - Design Standards. Applicants for marina construction or expansion shall provide the board with clear and convincing evidence showing compliance with the following design standards.

(a) All marinas shall be designed to minimize visual impact, to avoid damage to environment due to leakage or spills of fuels, lubricants, waste products, or other pollutants, and shall not represent a hazard to navigation, interfere with abutting property values, or significantly degrade the environment.

(b) The standard for marinas shall be 1 slip for every 25' of shoreline. This standard may be varied and more slips permitted if the marina is enclosed by land of the applicant, or other evidence is provided to the board which indicates that the increase is in the public interest. High

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demand for slips is insufficient to establish a public interest. Fewer slips may be permitted if evidence is provided to the board which indicates that the standard number of slips would represent a hazard to other waterfront activities or to navigation or would significantly degrade the environment.

Source. #4038, eff 4-10-86